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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,121	10/26/2001	Petr Peterka	018926-006510US	2113
20350	7590	03/07/2006	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP			COLIN, CARL G	
TWO EMBARCADERO CENTER			ART UNIT	
EIGHTH FLOOR			PAPER NUMBER	
SAN FRANCISCO, CA 94111-3834			2136	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/007,121

Applicant(s)

PETERKA ET AL.

Examiner

Carl Colin

Art Unit

2136

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-26.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

CHRISTOPHER REVAK  
PRIMARY EXAMINER

*al* 3/4/06

Continuation of 11. does NOT place the application in condition for allowance because: The reply filed on 2/13/2006 is not persuasive. With respect to claim 1, applicant states that Grimes does not disclose a server for providing program content. Examiner respectfully disagrees. The office action pages 2-4 clearly explains with citation that any server may provide the content. Applicant acknowledges (remarks, page 9) that content is distributed to the client from servers of the NOC, via and from service provider server. Grimes adds third party website server, DRM server, the NOC, or any other server at the NOC may provide the content; content can be ordered (which includes transmitted ) from a third party content provider server or website server (par. 38-40).

Applicant argues that the prior art does not disclose a server for storing a copy of the content originally provided to the network by another server. Examiner respectfully disagrees. Grimes even states that the NOC may comprise of plurality of servers including DRM server (par 31). Grimes discloses content received at the NOC from another server and the NOC multicasting the content (par. 39, 47, and fig.1). Figure 1 clearly shows content stored at the NOC . In addition to the evidence above, it is also obvious to one of ordinary skill in the art to have a server in a content delivery system storing a copy of the content as explained in the Office action; using a server operable for storing a copy in the distribution delivery system of Grimes which comprises of plurality of servers, so as to perform load balancing or serve as backup is knowledge generally available to one skilled in the art. Furthermore, Grimes discloses the content can be transmitting in real-time stream, (par. 47) which also means that a copy remains in the server as known in the art. Applicant further argues that there is no determination to know whether the client is entitled to receive content. Examiner respectfully disagrees. Grimes discloses "if content is restricting content, ordering content may also include user submitting proof that the user meets the restriction" (par 39), also discloses using certificate validation process including a hardware profile or pc profile (including serial number) that identifies the hardware components of the client that ordered the content is stored in the certificate; the client may be asked to manually enter and confirm the profile information (par. 41-42); a DRM server validates the certificate when the client requests a key using the certificate (par. 48). The general allegation made by Applicant that "Grimes teaches a DRM server that only generates and distributes keys used to encrypt content supplied by other servers and do nothing to check whether the client is authorized to receive the content" is erroneous and misleading. For at least the reasons mentioned above and the reasons cited in the final Office Action, the request for reconsideration has been considered but does not place the application in condition for allowance.